

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

02/25/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000709

FILED: _____

STATE OF ARIZONA

CARRIE M COLE

v.

RICHARD DONALD BARKETT

RICHARD DONALD BARKETT
PO BOX 44302
PHOENIX AZ 85064-0000

REMAND DESK CR-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. #1491039

Charge: 1. UNREASONABLE SPEED
2. UNSAFE LANE CHANGES
4. ILLEGIBLE REG. PLATE COVERED

DOB: 03/31/45

DOC: 06/21/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A). Appellant has requested oral argument in this

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matter. Oral Argument not being appropriate and necessary to a determination,

IT IS ORDERED denying Appellant's request for Oral Argument.

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

First, Appellant contends that the trial court erred in failing to require the State's witness, Scottsdale Police Officer Royston, to produce certain records requested in Appellant's Motion for Discovery. Appellant cites the Rules of Civil Procedure in support of his argument. However, the Rules of Procedure for Civil Traffic cases provide in Rule 14 that no pretrial discovery shall be permitted absent extraordinary circumstances. The rule further provides that the parties shall produce immediately prior to the trial exhibits, written or recorded statements of witnesses which may be offered at the hearing. It appears that Officer Royston responded to all of Appellant's requests, though not required by the Rules of Procedure in Civil Traffic cases. Appellant does not contest the sufficiency of Officer Royston's responses to his request. This Court finds no error.

Secondly, Appellant contends that the trial judge refused to hear several motions prior to the trial. Appellant's characterization of the record is incorrect. The record reveals that the trial judge asked Appellant to raise those issues as they occurred during the trial. The trial judge stated, "We'll take them as they come up." The trial court did not preclude Appellant from making any objections to the State's proffered testimony or exhibits. Appellant contends that he was precluded from demonstrating the "non-reflective properties of the license plate cover", admitted as State's exhibit #1. The record does not reflect that Appellant was precluded from making a

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reasonable demonstration or arguments concerning this license plate cover. The record does disclose several cynical and inappropriate comments by Appellant referring to exhibit #1 as a "radar obstruction device".

The remainder of the issues raised by Appellant concern the sufficiency of the evidence to support the trial judges findings of responsibility. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.² If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.³ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁵ The Arizona Supreme Court has explained in State v. Tison⁶ that "substantial evidence" means:

More than a scintilla and is such proof as a
reasonable mind would employ to support the conclusion

¹ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

² State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

⁵ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ SUPRA.

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reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

IT IS ORDERED affirming the findings of responsibility and sanctions imposed.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale City Court for further and future proceedings.

⁷ Id. At 553, 633 P.2d at 362.
Docket Code 512